Filed 5/1/07

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re CALVIN S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. CALVIN S., Defendant and Appellant.	C051191 (Super. Ct. No. JV113921)

APPEAL from a judgment of the Superior Court of Sacramento County, Lloyd G. Connelly, Judge. Affirmed.

John Hargreaves, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Mary Jo Graves, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Julie A. Hokans and John A. Bachman, Deputy Attorneys General for Plaintiff and Respondent.

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* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of Part II of the Discussion.

In the published portion of this decision, we hold the Fourth Amendment to the Constitution of the United States does not preclude the collection of deoxyribonucleic acid (DNA) samples in accordance with Penal Code section 296, subdivision (a)(1) from a juvenile who is adjudicated under section 602 of the Welfare and Institutions Code for committing a felony. In the unpublished portion of the decision, we decide the juvenile court did not abuse its discretion when it found good cause to continue the jurisdictional hearing. We affirm the judgment.

FACTS AND PROCEEDINGS

On August 19, 2005, around 4:00 p.m., Nicole P. parked her 1996 Honda Accord outside a manicurist's shop on Florin Road near Franklin Boulevard. After her manicure and pedicure, she looked outside the shop and noticed her car was missing.

At about 7:05 p.m. on August 19, California Highway Patrol Officer Eric Granrud stopped Calvin S. (the minor) for traffic violations while the minor was driving Nicole P.'s car. The minor was the sole occupant of the car that had been reported stolen that same day.

At the jurisdictional hearing, the minor testified that a man named Richard Evans, an acquaintance from his old neighborhood, had asked the minor to drive the Accord to the store for him.

Following the hearing, the juvenile court found the minor to be a person described by Welfare and Institutions Code section 602 after sustaining allegations that the minor

committed felony car theft (Veh. Code, § 10851, subd. (a)) and driving without a license (Veh. Code, § 12500, subd. (a)). The court continued the minor as a ward of the court and committed him to the Youth Center. The court also ordered the minor to provide biological samples for DNA testing and ordered that the test results be maintained in the state DNA Data Base and Data Bank Program pursuant to Penal Code section 296.

DISCUSSION

I

DNA Samples

Once the juvenile court sustained the petition alleging the minor had committed a felony, the minor was required to provide DNA samples for submission to the state's DNA Databank. (Pen. Code, § 296, subd. (a)(1).) The minor contends Penal Code section 296, as it relates to juveniles, violates the Fourth Amendment.

The compulsory, nonconsensual gathering of biological samples constitutes a search and seizure subject to Fourth Amendment protection. (See *Skinner v. Railway Labor Executives' Assn.* (1989) 489 U.S. 602, 616-617 [103 L.Ed.2d 639, 659-660]; *Loder v. City of Glendale* (1997) 14 Cal.4th 846, 867; *People v. Travis* (2006) 139 Cal.App.4th 1271.) However, "[a]s the text of the Fourth Amendment indicates, the ultimate measure of the constitutionality of a governmental search is 'reasonableness.'" (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646, 652 [132 L.Ed.2d 564, 574] (*Vernonia*).) "[W]hether a particular

search meets the reasonableness standard '"is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests."'" (*Id*. at pp. 652-653 [132 L.Ed.2d at p. 574].)

The authorities are consistent in holding that the extraction of biological samples from an adult felon is not an unreasonable search and seizure within the meaning of the Fourth Amendment. (See, e.g., *People v. Travis, supra,* 139 Cal.App.4th at pp. 1281-1290; *People v. Johnson* (2006) 139 Cal.App.4th 1135, 1168; *Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 505-506 (*Alfaro*); *People v. King* (2000) 82 Cal.App.4th 1363, 1371-1378 (*King*).) As this court explained in *Alfaro*: "We agree with existing authorities that (1) nonconsensual extraction of biological samples for identification purposes does implicate constitutional interests; (2) those convicted of serious crimes have a diminished expectation of privacy and the intrusions authorized by the [DNA] Act are minimal; and (3) the [DNA] Act serves compelling governmental interests. Not the least of the governmental interests served by the [DNA] Act is 'the overwhelming public interest in prosecuting crimes accurately.' [Citation.] A minimally intrusive methodology that can serve to avoid erroneous convictions and to bring to light and rectify erroneous convictions that have occurred manifestly serves a compelling public interest. We agree with the decisional authorities that have gone before and conclude that the balance must be struck in favor of the validity of the [DNA] Act." (98 Cal.App.4th at pp. 505-506.)

The minor recognizes the considerable weight of authority upholding DNA testing of adult felons. That recognition notwithstanding, the minor argues juveniles have special privacy interests that lead to a different constitutional result than that found in cases involving adult violators. Specifically, the minor contends his interest in keeping his juvenile adjudication confidential significantly alters the Fourth Amendment balancing of interests found in the decisions upholding the constitutionality of Penal Code section 296 when the offender is an adult, to the point where DNA testing of juvenile felons is unreasonable and, thus, violative of the Fourth Amendment.

The minor points to the strong public policy favoring the confidentiality of juvenile proceedings. (*People v. Superior Court* (2003) 107 Cal.App.4th 488, 493.) And, noting that the legitimacy of a claimed expectation of privacy "may depend upon the individual's legal relationship with the State" (*Vernonia, supra,* 515 U.S. at p. 654 [132 L.Ed.2d at p. 575]), he argues the "statutes prescribing confidentiality in juvenile proceedings and records are relevant to determining a juvenile's Fourth Amendment privacy interest."

We recognize the confidentially of juvenile court proceedings protects the minor from the stigma of being labeled a "criminal," a label which could prevent the youth's reintegration into the community. (See *San Bernardino County Dept. of Public Social Services* v. *Superior Court* (1991) 232

Cal.App.3d 188, 198.) This stigma is inconsistent with the juvenile court's goal of rehabilitation. (*Ibid*.)

We also recognize, in accordance with the policy of confidentiality, juvenile proceedings are not open to the public. (Welf. & Inst. Code, § 676.) The inspection and dissemination of juvenile records is carefully limited by statute (*id.*, § 827) and the juvenile court may order the juvenile court records sealed, which requires destruction of the juvenile records in the custody of other agencies and public officials. (*Id.*, § 781, subd. (a).)

Thus, we agree the juvenile's relationship to the state and the state's public policy favoring confidentiality of juvenile proceedings are factors that should be considered in balancing the interests to which we have referred. The question is whether that relationship and the policy favoring confidentiality tip the scales to the point where Penal Code section 296 becomes unconstitutional when applied to a juvenile who has been convicted of a felony. We that they do not.

As noted earlier, nonconsensual extraction of the biological samples necessary for DNA testing is a minimal intrusion into the privacy of the offender. (*Alfaro, supra,* 98 Cal.App.4th at pp. 505-506; *King, supra*, 82 Cal.App.4th at p. 1374.) And DNA testing under Penal Code section 296 has little impact on the minor's interest in the privacy of juvenile proceedings. Penal Code section 295.1 "specifically limits to identification purposes the DNA and other forensic identification analyses authorized by the Act." (*Alfaro, supra*,

at pp. 507-508.) DNA and forensic identification profiles and other identification information "are exempt from any law requiring disclosure of information to the public" except as otherwise provided by statute. (Pen. Code, § 299.5, subd. (a).) With few exceptions, DNA samples and DNA profiles are released only to law enforcement agencies (Pen. Code, § 299.5, subd. (f)) and anyone who uses DNA specimens or profiles for other than criminal identification and criminal exclusion purposes or discloses DNA information to an unauthorized person or agency is subject to criminal prosecution that may result in conviction of a felony. (Pen. Code, § 299.5, subd. (i)(1)(A).) With the use of DNA samples and the DNA Database so limited, making juveniles subject to the provisions of Penal Code section 296 is hardly a public announcement of a juvenile offender's felony conviction.

"The juvenile court's goals are to protect the public and rehabilitate the minor." (*In re Kacy S.* (1998) 68 Cal.App.4th 704, 711; see Welf. & Inst. Code, § 202.) The first and, to the extent the information maintained in the DNA Database acts as a deterrent to future criminal conduct, the second of those goals are aided by DNA testing of juvenile felons. As counterweight to the confidentiality interests of a minor who commits a felony, Penal Code section 296 advances the important public interest in the accurate prosecution of crimes by facilitating the detection, apprehension, and conviction of offenders. (See *Alfaro, supra*, 98 Cal.App.4th at p. 506; *King, supra*, 82 Cal.App.4th at p. 1375.)

Returning then to the principles set forth above relating to the reasonableness of a particular search and seizure, we find the intrusion into a juvenile felon's Fourth Amendment interests, including his interest in the confidentiality of juvenile court proceedings, does not outweigh the legitimate government interest in DNA testing as an aid to law enforcement. Thus, the search of juveniles conducted pursuant to the provisions of Penal Code section 296 is not unreasonable within the meaning of the Fourth Amendment. There was no error.

II

The Continuance Motions

Over the minor's objection, the juvenile court granted prosecution motions to continue the jurisdictional hearing on three occasions. Defendant contends the continuances constitute an abuse of discretion.

At the trial confirmation on September 14, 2005, the prosecutor told the juvenile court she was not ready to go to trial because Officer Granrud had been deployed to Louisiana. The prosecutor did not know when Officer Granrud would be back, so the court continued the conference until the next day.

On the following day, the juvenile court found good cause to continue the pretrial conference until September 19, 2005, and the jurisdictional hearing to September 20, 2005, based on Officer Granrud's deployment to Louisiana to assist with hurricane relief efforts. The continuances caused the minor to be detained beyond the 15-day limit established by former rule

1486 (now rule 5.776) of the California Rules of Court. The juvenile court denied the minor's motion to dismiss the petition pursuant to that rule.

On September 19, 2005, the prosecutor told the court that Officer Granrud was still deployed in Louisiana, and would not be available until September 20. The juvenile court granted the prosecution's motion to continue the jurisdictional hearing to September 21, 2005, and denied the minor's request to be released pursuant to California Rules of Court, former rule 1486.

On September 22, 2005, the court continued the trial for one day because no courtroom was available after the minor exercised a peremptory challenge to the juvenile court judge. The court also denied the minor's motion to be released. The jurisdictional hearing commenced on September 23, 2005.

A jurisdictional hearing may be continued if the juvenile court finds good cause for granting the continuance. (Welf. & Inst. Code, § 682.) A party seeking a continuance to secure an unavailable witness must establish "'that the following legal criteria have been satisfied: (1) That the movant has exercised due diligence in an attempt to secure the attendance of the witness at the trial by legal means; (2) that the expected testimony is material; (3) that it is not merely cumulative; (4) that it can be obtained within a reasonable time; and (5) that the facts to which the witness will testify cannot otherwise be proven.' [Citation.]" (*Owens v. Superior Court of Los Angeles County* (1980) 28 Cal.3d 238, 251.) The juvenile court's finding

of good cause for a continuance is reviewed for abuse of discretion. (*In re Maurice E.* (2005) 132 Cal.App.4th 474, 481 (*Maurice E.*).)

In *Maurice E.*, the juvenile court granted a continuance when one of the testifying officers was the only person available to watch his newborn child and the victim could not identify the minor as one of her attackers. (*Maurice E., supra*, 132 Cal.App.4th at pp. 476-477.) The Court of Appeal found no abuse of discretion "after considering the prosecutor's offer of proof, that the importance of the missing officer's testimony and the reason for which the officer was not present were sufficient to constitute such good cause." (*Id.* at p. 481.)

The continuances granted by the juvenile court compare favorably to the one upheld in *Maurice E.* Officer Granrud was deployed to New Orleans to deal with the emergency in that city. On September 5, 2005, following normal practice for Sacramento County, a subpoena for Officer Granrud was sent to the California Highway Patrol's liaison officer. The prosecutor requested a continuance just after she found out Officer Granrud would be unavailable. The jurisdictional hearing was continued for only so long as was necessary for Officer Granrud to come back from New Orleans, and Officer Granrud was the only witness to identify the minor as having driven the stolen vehicle.

In light of the importance of the officer's testimony, the reason for the continuance, and the prosecution's promptness in reporting the officer's unavailability, the juvenile court did not abuse its discretion in granting the continuances.

Finally, while the juvenile court correctly granted the continuances, it erred in failing to release the minor once he was detained for more than 15 days. If a minor is detained when a delinquency petition is filed, "the petition must be set for hearing within 15 judicial days from the date of the order of the court directing such detention." (Welf. & Inst. Code, § 657, subd. (a)(1); see Cal. Rules of Court, rule 5.776.) The juvenile court refused to release the minor because it had found good cause to continue the jurisdictional hearing. Good cause for a continuance is not a sufficient reason to detain the minor beyond the statutory time limit. (*In re Kerry K*. (2006) 139 Cal.App.4th 1, 6.)

The juvenile court's error does not constitute grounds for reversal. Improper detention of the minor must be raised by seeking "immediate writ relief." (*Maurice E., supra*, 132 Cal.App.4th at p. 479.) Having failed to seek writ relief, any claim by the minor regarding the legality of his detention is now moot. (*Ibid*.)

When "'a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot.' [Citation.]" (*In re Robin M.* (1978) 21 Cal.3d 337, 341, fn. 6.) "The relatively brief life of a prejurisdiction detention order presents such circumstances." (*In re Kerry K., supra*, 139 Cal.App.4th at p. 4.) Therefore, we exercise our discretion to inform the juvenile court of its error. (*Ibid*.)

DISPOSITION

The judgment is affirmed.

HULL, J.

We concur:

DAVIS, Acting P.J.

ROBIE, J.